B. Jurisdiction

The Commission is correct that it has authority under Section 201(a) of the Communications Act to impose equal access and interconnection obligations on CMRS providers when the Commission find such action "necessary or desirable in the public interest." 47 U.S.C. § 201(a). NPRM at ¶ 31. There can be no serious question as to the Commission's legal authority to make such a public interest determination. See e.g., Mid-Texas Communications v. American Telephone and Telegraph Co., 615 F. 2d 1372, 1379 (5th Cir. 1980), rehearing denied, 618 F. 2d 716, cert. denied, 459 U.S. 1145 (1981); Phonetele, Inc. v. American Telephone and Telegraph Co., 664 F. 2d 716 (9th Cir. 1981), cert. denied, 459 U.S. 1145 (1981), on subsequent appeal, 889 F. 2d 224 (9th Cir. 1989), cert. denied, 112 S. Ct. 1283 (1992). The comments filed in prior proceedings do not effectively dispute the Commission's interpretation of its statutory authority. While it is true, as some commenters have noted, that the Commission has historically imposed equal access obligations only where it found a local "bottleneck," (see e.g., comments cited in NPRM at 14 n. 66), this historical fact does not serve as a limitation on the Commission's authority to impose such obligations. Moreover, it should be noted that the Commission's authority to impose these requirements on CMRS providers is not limited to cellular carriers. The Act authorizes the Commission to impose them on any common carrier engaged in interstate or foreign communication by wire or radio and, therefore, the Commission could impose these requirements on CMRS providers, such as broadband PCS and wide-area SMR providers which, as the Commission has recognized, will compete directly with cellular system. See NPRM at ¶ 39.

While Southwestern Bell believes the Commission should seek the removal of equal access obligations from all CMRS providers, rather than extend those obligations to non-Equal Access Cellular Providers, the Commission has the authority to find that the regulatory parity objectives set forth in the recent amendments to the Communications Act mandate such an extension. Congress has expressed its desire that "consistent with the public interest, similar services [be] accorded similar regulatory treatment." H.R. Rep. no. 213, 103d Cong., 1st Sess. 494 (1993). See also H.R. Rep. 111, 103d Cong., 1st Sess. 259-60 (reviews the "regulatory parity") goals of the legislation). Thus, the Commission has tentatively concluded that requiring all cellular carriers to provide equal access is consistent with the principle of regulatory parity established by the Congress, and the Commission has also indicated that the regulatory parity mandate may require the Commission to extend equal access requirements to CMRS providers which will compete directly with cellular providers. NPRM at ¶ 39.

C. Cellular Systems Are Not "Bottlenecks"

The imposition of equal access on RBOC-affiliated CMRS providers is an attenuated mutation of the MFJ. It was not until a subsequent order in 1986 that the Court first explicitly extended the equal access requirement to cellular service, observing:

> The decree is concerned primarily with two types of monopoly power that the Regional Companies have the ability to exercise: (1) physical control of the local wireline "bottleneck" and (2) monopoly revenues which can be used to cross-subsidize.[47]

Neither of those threats are present in the wireless market. As the Court itself observed "the bottleneck aspect of Regional Company monopoly power is largely absent in

---

[47] United States v. Western Electric and AT&T, 552 F. Supp. at 187, quoted in United States v. Western Electric Co. No. 82-0192 (U.S.D.C.), February 26, 1986, at p. 8.

this case." Id. at p. 9. Nevertheless, the Court extended the equal access obligations to RBOC-affiliated CMRS providers, even though it has not found it necessary to do so with GTE which was in a similar position with its cellular affiliates.[48] As to the ability to cross subsidize, AT&T's own experts, Robert Willig and Douglas Bernheim explain:

> [C]ellular service is not regulated. It is well-understood that a vertical merger between an unregulated, monopolistic firm and a competitive firm does not generally permit the monopolist to "lever" its market power into the competitive industry. Since the monopolist can only charge the monopoly rent once, it has no generally applicable incentive to favor its affiliate if another competitor can provide the good or service in question more efficiently.[49]

In its amicus brief filed in support of both the RBOC's Generic Wireless Waiver Petition, and of SBC's separate filing to remove equal access restrictions on wireless providers, the CTIA[50] argues this extension of equal access to cellular was the result of an "historical accident" accomplished by " ... application of the decree's definition of "exchange telecommunications" to cellular and the automatic operation of the consent decree's terms."[51]

In order for the traditional "bottleneck" theory to withstand even minimal scrutiny there must be a lack of alternative methods of obtaining the desired service, as in the so-called LEC bottleneck scenario. Unlike the LEC's perceived control of access to the single

---

[48] GTE is the second largest cellular provider based on POPs and is the nation's largest LEC. Yet, no equal access is imposed on its wireless customers. Since GTE has not voluntarily converted to an equal access environment, it is logical to presume there has been no customer demand for this access and therefore no necessity to convert in order to remain competitive.

[49] See Affidavit of Robert Willing and Douglas Bernheim, AT&T Opposition to Generic Wireless Relief, October 25, 1993, at pp. 8 - 9.

[50] Cellular Telecommunications Industry Association (the trade association of the cellular industry which represent over 90 percent of the current cellular industry).

[51] Amicus Curiae Brief of CTIA in support of Generic Wireless Relief, CA No. 82-0192 (HHG), (U.S.D.C., August 8, 1994) at p. 14.

landline network, viable alternatives exist in the wireless market. Those alternatives are increasing exponentially as a result of the decisions of this Commission.

With both A and B system cellular carriers licensed in each market, there is no pre-existing sole provider in cellular. The Commission has also mandated that cellular licensees must permit resale of their service,[52] so most markets also have resellers who offer cellular service ubiquitously to the same customer base that is solicited by the two licensed cellular carriers.[53]

The licensing of broadband PCS providers by this Commission will more than triple the number of potential CMRS providers per service area. Two 30 MHz licenses will be auctioned for each MTA, and one 30 MHz block and three 10 MHz blocks will be auctioned in each BTA.[54] The Commission has created fifty-one MTA licenses, and 493 BTA licenses per frequency block. Id. These auctions may begin before year-end. With the introduction of these entrants into the marketplace, the already competitive wireless market literally explodes with new alternative wireless networks.

To those who doubt the viability of PCS as a competitor, PCS is already working in the United Kingdom. With two PCS operations in service (one on-line in 1993, the other in 1994), already about 25 percent of new mobile activations in the latest quarter in the United

---

[52] See comments, infra, at Section IV.

[53] SBMS has multiple resellers in most of its markets.

[54] NPRM and Tentative Decision, Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 RCC Rcd. 5676, 5688 (1992).

Kingdom have been on these new PCS networks.[55] Cellular prices in the United Kingdom have decreased by 20 to 33 percent since these PCS networks became operational. Id.

Finally, enhanced specialized mobile radio (ESMR) service providers will provide nationwide voice, data and paging services utilizing wireless frequencies. Nextel is a key player in the SMR area, even without the $1.3 billion investment from MCI. As quoted in the CTIA amicus brief, Nextel's Chairman, Morgan E. O'Brian, described Nextel's rapid deployment plans for its nationwide wireless service:

> Nextel Communications is investing billions of dollars to establish and construct an advanced, all digital nationwide wireless telecommunications system that is the first and most significant competitor to the existing cellular network. Nextel's (ESMR) system is up and running in Los Angeles and San Francisco, and is rapidly approaching operational status in Chicago and the New York area as well. Nextel plans to provide ESMR services to customers in 45 of the 50 largest markets in the country by the end of 1996.[56]

The CTIA points out that within five years, Nextel's service areas are expected to encompass all of the nation's top 50 markets. Id. As Professor Hausman points out, Nextel has announced plans to acquire two more major ESMR providers, Dial Call and One Comm.[57] With these three companies, Nextel will be able to offer service to over 80 percent of the United States in almost every major MSA, with over 200 million POPs in its service area. Id. No cellular carrier comes close to this ubiquity. MCI, when it was a solid investor in Nextel, had insisted that MCI act as Nextel's sole long distance provider, rather than allowing

---

[55] Affidavit of Jerry Hausman at p. 6.

[56] Letter from Morgan E. O'Brian to the Honorable Ernest F. Hollings (July 29, 1994); quoted from CTIA Amicus Brief, Generic Wireless Waiver at p. 7.

[57] See Jerry Hausman affidavit at p. 5.

Nextel to offer equal access.[58] This is extremely ironic in light of the fact that it was MCI which first suggested equal access be imposed on all cellular providers.[59]

Even in the face of these new competitors in an industry that has never been without competition, MCI continues to argue that local cellular markets were non-competitive in 1987, and remain non-competitive today.[60] Apparently, MCI's own expert, Daniel Kelley, was kept in the dark about MCI's potential partner, Nextel, and the marketing plans of Nextel's chairman, since, while attempting to minimize the impact of new entrants into the competitive wireless arena, Kelley maintains that this entrance will not justify a conclusion that future competitive conditions will be dramatically altered " ... when, or if, these technologies finally do become available."[61] According to Nextel, that time is now ("up and running in Los Angeles and San Francisco") and will be in 45 of the 50 largest markets by 1996. (This is in contrast to Kelley's testimony that Fleet Call's (now "Nextel") roll out is "limited to six metropolitan areas.") Id. at p. 8. MCI argues what it wants where it's convenient to do so, but the hard fact is, it is unlikely that MCI would have even considered investing over a billion dollars in a wireless business which MCI did not expect to be able to successfully compete!

---

[58] Exhibit A to Nextel's Schedule 13(d) filing with the Securities & Exchange Commission.

[59] See MCI's Petition for Rulemaking at 4- 6, FCC RM 8012.

[60] See MCI's Opposition to the Bell Companies Motions for Generic Wireless Waivers, August 8, 1994, at p. 18.

[61] Affidavit of Daniel Kelley, August 8, 1994, at p. 6, emphasis added.

AT&T's experts concede reality by stating: "In addition, it is widely recognized that the advent of new wireless technologies is not far off. Several new competitors may enter each wireless marketplace through the deployment of PCS technology."[62]

Thus, the Commission continues to fulfill its historic policy of fostering new competition. While this is good for the public and healthy for competition in general, these expansions of competitive entrants into wireless are the death knell to assertions of the existence of a wireless bottleneck. Even MCI, the entity that initiated this proceeding, could not reasonably dispute that conclusion when the Chairman of Nextel, MCI's former partner in the wireless industry, stated in his letter to the Honorable Ernest Hollings that wireless providers should not be subjected to an equal access requirement since "commercial mobile services are not bottleneck facilities." Id. Without the existence of a bottleneck, equal access is not necessary. In order to make the public interest determination, the Commission should recognize the public does not want equal access, and the cost of the imposition of equal access outweighs the potential benefits.

D. Equal Access Does Not Benefit the Public

While MCI and other commenters in proceedings leading up to the instant docket have paraded the "horribles" of a world without equal access[63] and have speculated about how equal access is a boon to the public, three facts remain: interexchange carriers continue to charge individual cellular customers anti-competitive rates in equal access markets;

---

[62] Affidavit of Willig and Bernheim, at p. 12.

[63] Again, consider MCI's prior agreement with Nextel to be its sole long distance provider. MCI wants it both ways. Guaranteed access where it does not control the CMRS provider and exclusivity where it does.

interexchange carriers have failed to introduce features and innovations in equal access markets; and, most importantly, cellular customers do not demand equal access.

1. Interexchange Carriers Charge Individual Cellular Customers Anti-Competitive Prices

MCI, along with AT&T and Sprint, charge full retail or premium rates to the great majority of their cellular long distance customers.[64] Almost all cellular customers buy their long distance service from the Basket 1 tariff prices of AT&T, or from the virtually identical prices charged by other interexchange carriers. Id. Only large cellular customers have sufficient usage and influence to be able to negotiate meaningful discounts off these premium rates. Id. Undiscounted prices have risen by 9.6 percent during the 12 month reporting period of March 1993 through March 1994, well over the 0.4 percent increase in the price of local residential service. Id.

The FCC reports that actual prices for Basket 1 services offered by AT&T and used by cellular customers have been close to the price cap index for 4 years.[65] While AT&T's productivity has been substantially higher than target, these productivity gains have not been reflected in lower prices, indicating a lack of competition. Id. at p. 9.

Effective August 1, 1994, AT&T raised its rates for residential long distance service by about 1 percent, and for commercial long distance service by about 3.9 percent. Id. at p. 10. MCI and Sprint almost immediately matched the increase. Id. These lockstep price increases demonstrate lack of competitive pricing for Basket 1 services. As Professor

---

[64] Affidavit of Jerry Hausman, at p. 7.

[65] In the Matter of Price Cap Performance Review for AT&T, CC Docket No. 92-134, June 24, 1993; Affidavit of Jerry Hausman, at p. 8.

Hausman points out, AT&T's price increase demonstrates price cap regulation, not competition, was constraining AT&T's prices. Id. at p. 11. Despite these indisputable facts, MCI continues to pose two ludicrous arguments: first, if the BOCs could provide interexchange service, cellular customers would pay more for that service, and second, cellular customers pay too much for cellular, not long distance service.[66]

This is another example of MCI's desperate attempt to preserve its own anti-competitive pricing plans at the full expense of the customer. In fact, cellular airtime prices, in sharp contrast to long distance service prices, have steadily declined since divestiture.[67] Not only are interexchange carriers charging premium rates for their service to individual cellular customers, but they are engaging in price discrimination while doing so.

Price discrimination " ... is defined by economists to be the practice of charging different prices for goods or services which have the same cost, or equivalently, to be charging prices which lead to different margins (price cost) for similar goods or services."[68] This discrimination is precisely what the interexchange carriers are doing in cellular markets.

These interexchange carriers charge retail customers the same price for cellular long distance as they do for landline, despite the fact their costs for the provision of this cellular long distance service are from 25 to 50 percent lower than for landline long distance calls. Id. This lower cost is due to the fact that the interexchange carriers transporting cellular calls do not have to pay the switched access charges imposed by the LECs. For instance, on

---

[66] MCI brief in Generic Wireless Relief Proceeding, at p. 19 (emphasis added).

[67] Hausman Affidavit, Generic Wireless Relief Proceeding, Ex. B. Fig. 1.

[68] See, Affidavit of Jerry Hausman, at pp. 12 - 16.

interLATA landline calls, AT&T pays Southwestern Bell Telephone Company ("SWBT") an access fee of about $0.028 per minute for originating and terminating access. AT&T has estimated these access fees comprise 40 to 45 percent of their total cost.[69] However, an interexchange carrier does not pay SBMS, SWBT's cellular affiliate, switched access for a long distance call originating on a cellular phone. The interexchange carrier pays transport only which is about $0.01 per minute. This results in a savings that is not reflected in the cost of cellular long distance. Thus, price discrimination results. Id.

For those interexchange carriers whose cellular long distance is carried via a direct connection to the interexchange carrier POP, the transport fee is avoided and the facilities cost ranges from $0.003 to $0.004 per minute. Id. at p. 14. These savings were not passed through to the customers. Id. Given that MCI and Sprint have followed the price leader, AT&T, in this discrimination, the Commission's tentative conclusion that equal access creates incentives for the interexchange carrier to compete on the basis of price[70] is not supported by history, or by how the interexchange carriers currently price their services in equal access markets.

The DOJ in its filing in the Generic Wireless Waiver proceeding relied upon an affidavit from a Dow Chemical employee as evidence of a customer who wants equal access.[71] The affidavit states that Dow spends $13,000,000 to $14,000,000 annually on long distance service, and $5,000,000 annually on cellular. Dow also claims it receives a 50

---

[69] Affidavit of Jerry Hausman, at pp. 13.

[70] See NPRM/NOI at p. 19, ¶ 36.

[71] Affidavit of Larry Jacobs, CA. No. 82-0192 (HHG), July 22, 1994.

percent discount off MCI and AT&T's premium long distance rates due to the volume of its usage. Dow has now decided to centralize its cellular service to take advantage of these same long distance discounts. Large customers with the buying power of a Dow will always be able to negotiate deep discounts with the interexchange carrier of their choice. Even MCI notes " ... many customers, particularly heavier users buy interexchange service at substantially discounted prices."[72]

The bitter irony is that the premium rate from which Dow and other heavy users receive discounts, is the same rate the individual long distance cellular customer, with no bargaining power, is assessed by these interexchange carriers. This is true despite the fact the interexchange carrier could (but does not) pass through to these low-usage customers the savings it realizes from the lack of exchange access charges on cellular long distance. MCI in its opposition to the Generic Wireless Waiver, while acknowledging this cost savings, attempts to explain away this practice by complaining that BOC-affiliated cellular companies charge more for billing and collection service than do LECs, and that cellular uncollectibles are "generally higher" than landline. Id. MCI does not even attempt to quantify this uncollectible number and if MCI does not like the cost of billing and collecting services, it can do its own billing and collection. Certainly it does so in SBMS markets, since SBMS does not offer this service. MCI then goes on to state that developing discount plans for "relatively large customer groups" entails fixed costs and that these kinds of increased costs are why savings to MCI in serving cellular customers are offset. Id. In other words, MCI's policy of giving deep discounts to large customers has another deleterious effect on the

---

[72] Brief of MCI, Generic Wireless Relief Proceeding, at p. 21.

individual cellular customer: the cost of discounts to large customers inspires MCI to refrain from passing through the savings it incurs in serving individual cellular customers. In effect, MCI uses equal access and the lack of price competition in the long distance market to force the individual cellular long distance customer to subsidize the large customers.

In "cold" calling to determine what rates were available from interexchange carriers, SBMS found it difficult to get a rate commitment. Neither AT&T nor MCI responded to the inquiry. Sprint offered a volume discount. Beyond Sprint, SBMS could find only two other carriers, out of the participating interexchange carriers in SBMS' markets, that had a presence in the entire United States for offering cellular long distance. Both offered off-tariff rates that varied based on volume. One carrier's rates ranged from a low of $0.08 peak and off-peak for a million minutes, to a high of $0.125 peak and $0.10 off-peak for a low of 100,000 minutes (but less than one million). These quotes were for domestic rates only. The other carrier offered a blended national/international bulk rate ranging from $0.09 to $0.25 per minute. Again, the rate one can receive is closely tied to volume, which is of no benefit to the individual consumer, who continues to pay premium rates, while the large customers, like Dow, have ample influence and clout with which to bargain discounts. Were it free to do so, SBC could and would pass these discounted bulk rates through to its customers, for the first time allowing the individual cellular customers to achieve a significant cost savings in long distance expenses.

2. The interexchange carriers have failed to provide innovations for cellular customers in equal access markets.

Viewed against this backdrop, MCI's claims of requiring an equal access environment in order to provide innovations to customers is not supported by its past performance in equal

access markets. A prime example of the lack of candor MCI has displayed in its arguments, is its attempt to explain away the criticism by some cellular carriers that the interexchange carriers have indeed failed to provide customized services to cellular customers. MCI argues that "roaming" customers travelling from a system providing equal access to a system not providing equal access cannot reach their chosen interexchange carrier.[73] What about customers who roam from a market offering equal access to another market which offers equal access? MCI has made no effort to offer unique services to these customers. MCI also warns that equal access, is " ... essential to realizing ubiquitous seamless service." Id. at p. 6. Such a statement is abject nonsense. In no way must there be equal access for seamless service to occur. Ironically, when the cellular industry was struggling to achieve waivers from the Court in order to provide intersystem hand-off and automatic call delivery which are essential if nationwide seamless service is to become reality, MCI vehemently opposed such progress. MCI insisted such capabilities should only be implemented when and if MCI could benefit from them.[74] Now that IS-41 is a reality and equal access roaming is technically feasible, MCI refuses to participate in equal access roaming, despite their previous insistence that this capability was crucial to them and their customers. Id. Equal access roaming was offered by SBMS to MCI (and all other interexchange carriers)[75] pursuant to a process that began in November 1992. After working with interested interexchange carriers and testing

---

[73] MCI Reply Comments in Gen. Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communication Services (November 9, 1992) at p. 4.

[74] See Letter from MCI counsel, Michael Salsbury, to Nancy Garrison, Assistant Chief, Department of Justice, dated December 6, 1989.

[75] Letter from Kellye Abernathy to MCI, dated November 19, 1992, Tab 3.

the viability, equal access roaming was offered in most SBMS markets in February 1994.[76] MCI continues to refuse to participate in this offering to date as does AT&T. Sprint, and several of the smaller carriers, however, have chosen to participate in this service.[77]

Therefore, MCI's argument cited by the Commission on page 9 of the NPRM/NOI that its customers cannot roam in a non-equal access market is meaningless subterfuge. Even where its customers can roam using their chosen interexchange carrier, MCI does not participate. Thus, the Commission's tentative conclusions that equal access could enhance the usefulness of communications services and "spur" innovations is not supported by history;[78] just as the recovery of fixed costs has not resulted in price reductions, (Supra). Instead, this is yet another phantom justification MCI offers for perpetuating the equal access relic into the future of wireless.

3. Customers Do Not Demand Equal Access

The one barrier these phantoms can never break through is the one that should be of the utmost interest to this Commission: ***the public does not want equal access.*** The CTIA points out that wireless customers generally do not demand equal access or a choice of long distance carriers.[79] Logically, if this were not true, the brisk competition between cellular providers offering equal access and those who do not, would not be where it is today. In

---

[76] Letter from Kristi Mihalovich to MCI, dated February 16, 1992, Tab 4.

[77] See list of Interexchange Carriers participating in equal access roaming, Tab 5.

[78] See NPRM/NOI at pp. 19 - 20.

[79] CTIA Amicus Curiae Brief Memorandum of the Cellular Telecommunications Industry Association in support of Generic Wireless Relief, CA No. 94-0192 (HHG) (U.S.D.C., August 8, 1994),at p. 21.

fact, it is realistic to presume if cellular carriers were at a competitive disadvantage due to the fact they were not providing equal access, they would have voluntarily converted to equal access long ago. That stampede has not occurred.

The CTIA points out that on an annual basis, approximately 8.4 percent of cellular customers change cellular service providers, and 15.6 percent shift from cellular to other telecommunications services.[80] The CTIA notes:

> "Indeed, many wireless providers have indicated to CTIA that they have received no requests from subscribers seeking a particular long distance carrier's service, nor have they received a single request for equal access."

Id. This lack of interest parallels what a cross section of the customers in the cellular markets where SBMS provides service said in response to a survey conducted recently.[81] In this survey, customers were asked:

> "We realize you already have a cellular phone, but let's assume for the moment that you are planning on purchasing a new cellular phone today. If you were purchasing cellular equipment and service today, I'd like to know which of two options you would prefer for long distance service. If you were making your choice today, which of these two options would your prefer?
>
> 1. Provided as it is currently.
> 2. Provided through cellular carrier."

Id., at p. 18.

---

[80] CTIA Amicus Curiae Brief of CTIA in support of Generic Wireless Relief, CA No. 82-0192 (HHG), (U.S.D.C., August 8, 1994) at p. 21.

[81] Cellular Long Distance Concept, Bernard Englehard & Associates, Inc. August 1994, at p. 18, Tab 2.

In response, 72 percent of the customers asked preferred to have their cellular carriers provide their long distance service, 20 percent preferred to choose their long distance carrier and 8 percent did not respond or had no preference. Id.

The Department of Justice in its response to the Generic Wireless Waiver argues that their " ... investigation indicated cellular subscribers value the choice that equal access gives them."[82] This is not reflected in the survey conducted on behalf of SBMS. When asked to rank what was most important to these customers on a scale of 1 to 4, SBMS' customers chose large calling scopes over choice of long distance carrier in significant numbers.[83] In fact, choice of long distance carriers was ranked as the least important factor of the four options offered. Id.

Professor Hausman surveyed cellular resellers in Los Angeles and San Francisco MSAs and found only 48 percent offered a choice of long distance carriers.[84] Hausman notes: "Thus, resellers who use exactly the same physical facilities as the BOC cellular companies with whom they are in competition, find it unnecessary to offer equal access despite the fact

---

[82] Brief of Department of Justice, Generic Wireless Relief Proceeding, at p. 20. This conclusion was supported by the Affidavit of one huge, corporate customer (Dow) out of 17,000,000 cellular customers throughout the United States.

[83] Cellular Long Distance Concept, at p. 15-16. Sixty-two percent considered "large calling scope" the most important factor associated with their cellular service, while only 7 percent considered the "ability to choose a long distance company" the most important factor. Another 23 percent considered calling scopes the second most important factor, while 13 percent considered the ability to choose a carrier as the second most important factor. Id. at p. 16. Forty-four percent, almost half of the customers surveyed, considered "ability to choose a carrier" as the least important factor, while 9 percent considered calling scopes the least important factor. Id. The other two factors were "competitive local rates" and "24-hour customer service.", Tab 2.

[84] Affidavit of Jerry Hausman, at p. 18.

that any customer can obtain equal access and identical cellular service by switching to a BOC agent for service." Id. He concludes this survey data demonstrates a lack of customer demand for equal access in the cellular arena. Id.

Relieved of equal access obligations, the cellular carrier could become the "big customer" on behalf of all of its individual subscribers and negotiate a long distance bulk rate that can be passed through to its individual customers at substantial savings. MCI and others argue this has not happened in markets where there have traditionally been no equal access obligations.[85] What this argument fails to consider is the fact the cellular carrier competing against an equal access obligated carrier has had little incentive to discount its bulk-rate long distance provision, since it was secure in the knowledge its competitor could not provide a discounted rate, and that the interexchange carriers were charging individual cellular customers premium rates. That environment would change dramatically if both cellular providers, and 5 or 6 other wireless providers, in a market were free to resell discounted bulk rate long distance service.

The incentive to do so is currently demonstrated by the customers' demand for large local calling scopes. Indeed, even now, with many competing carriers still obligated to provide equal access, the non-RBOC cellular provider has recognized the importance of these calling scopes to their customers and has moved towards forgoing long distance revenues in order to provide the large local calling scopes cellular customers demand.

---

[85] Department of Justice brief in Generic Wireless Waiver, at p. 20.

E. Cellular Customers Demand Larger Calling Scopes

If the Commission determines that some form of equal access is mandated for some or all CMRS providers, the fundamental determination the Commission must make is what is the appropriate local calling scope in the modern wireless environment? If the Commission decides to impose existing service area definitions, then it should follow its own reasoning behind choosing MTAs for PCS providers, for that reasoning leads to the same conclusion for cellular and other CMRS providers. MTAs are the appropriate choice for this scope, out of the existing service area definitions, but other, creative alternatives also exist and should be considered.

1. Background

When surveyed, almost ten times as many SBMS customers responded that a large local calling area was the most important item associated with their cellular service, than those who listed a choice of long distance carriers as the most important item.[86] Of the four items listed in the survey, (large calling area, competitive local rates, 24-hour customer service, and ability to choose a long distance company), large calling area ranked first and choice of long distance carriers was dead last. Id.

This is not an isolated result. By the very nature of the service being offered, it is reasonable to presume that mobility and the flexibility to continue and complete calls while in motion is of utmost importance to a cellular customer. The RBOC-affiliated cellular carriers have struggled with accommodating this logical customer requirement while adhering to LATA boundaries, since the inception of cellular service.

---

[86] Supra, see further survey at Tab 2.

LATA boundaries were established with landline local exchange networks (as they existed during the 1970's) in mind. No thought was given to cellular service areas or mobile calling patterns. The customers of the LEC are fixed in place, making a determination of calling patterns more easily discernable. In the wireless arena, the old LATA boundaries are utterly meaningless to customers on the move. [87] Indeed, the MSAs and RSAs established by this Commission to demarcate cellular service areas are not drawn to coincide with LATAs.[88] The calling patterns and needs of cellular customers do not necessarily coincide with either LATAs or MSAs/RSAs. This fact has led to a crazy quilt of waivered multi-LATA calling scopes and waivered integrated MSAs and RSAs to meet some, but certainly not all, of these consumer demands.

With the introduction of PCS, which will serve an area that corresponds to neither LATAs, MSAs or RSAs,[89] confusion will reign. If PCS providers can draw local calling scopes to the full extent of their licensed territory, they will, from their inception, have a substantial competitive advantage over equal access obligated cellular carriers.[90]

The Department, in its response to the RBOC's motion for Generic Wireless Relief, refused to recommend an appropriate calling scope, wanting this Commission to act first.[91]

---

[87] United States v. Western Electric Co., 569 F Supp. 990 (D.D.C. 1983)

[88] Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communication Systems, 89 FCC 2d 58 (1982), Amendment to the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd. 770 (1993).

[89] Broadband PCS Order, 8 FCC Rcd. at 7732.

[90] See, Cellular Long Distance Concept, supra, at p. 15, 16, Tab 2.

[91] Department of Justice Memorandum, Generic Wireless Waiver Proceeding, at p. 48.

This Commission has the expertise to do what the Department refused to do. Out of the existing service area definitions (LATAs, MSAs, RSAs, or MTAs), the only existing calling scope boundary that makes sense in the CMRS environment is the universal adoption of the MTA as the appropriate calling scope for use by all CMRS providers. In the alternative, the Commission may want to consider a more creative solution that does not already exist.[92]

2. Current Cellular Environment

Driven by the very competitive forces this Commission seeks to encourage, that is, the demands of the consumers, cellular companies have already taken strides to provide the large calling scopes demanded by their customers. RBOC-affiliated cellular providers have had to go to the Court literally hundreds of times in order to request waivers of LATA restrictions to meet this customer demand. The Court has granted many of these waivers and has thus approved interLATA provision of service in most instances.

RBOC-affiliated cellular carriers also sought approval from the Court and ultimately received approval of the "RSA Waiver," which permits a carrier to integrate into a single calling scope those RSAs that are wholly or partially located within the same LATA as the MSA, as well as those RSAs located in an immediately adjacent LATA.[93] This RSA waiver has permitted cellular carriers to develop "clustered" calling scopes where an MSA and surrounding RSAs are integrated to give the customer a local calling scope many times larger than he was able to enjoy prior to the effective date of the RSA waiver.[94]

---

[92] See Comments at Section III E. 4., infra.

[93] United States v. Western Electric, et al, 82-0192 HHG (U.S.D.C.1), Order dated February 18, 1993.

[94] See Table 3, Affidavit of Jerry Hausman, Tab 1.

SBMS has also sought and achieved other waivers, such as Topeka and Lawrence, Kansas to St. Joseph, Missouri (served through the Kansas City system), the Washington D.C. and Baltimore, Maryland MSAs and Boston and Worcester, Massachusetts MSAs and New Hampshire, among others. Of course, SBMS uses interexchange facilities to "hop" any LATA boundaries involved in these larger calling scopes. Professor Hausman has also shown that the average increase in calling scope as the result of the waivers has been 24.9 percent, while for the most part per minute cellular prices after a waiver decreased. Id., at p. 23. Professor Hausman calculated the median change in price declined 4.61 percent per minute. Id. This is a "real life" example of how granting flexibility has benefitted the customer. Rather than raise prices to make-up for the toll being absorbed, or as justified by the greater calling scope, rates in these markets have trended down.[95]

Another example is the fact SBMS serves both the Dallas, Texas MSA and the Oklahoma City, Oklahoma MSA. SBMS could put one DS-1 facility in place between the two markets at a one-time cost of $2,000.00 and the flat rate of $3,200 per month to carry all wireless traffic between the MSAs. At AT&T's 1993 retail rates this traffic would generate $30,440 in revenue, for a profit margin of nearly 90 percent.[96] SBMS could eliminate this long distance charge due to the low cost of the necessary facilities. SBMS customers could then enjoy similar benefits between Dallas and the West Texas markets.[97]

Another step for RBOC-affiliated cellular companies was the automatic call delivery

---

[95] See Table 2, 3, Affidavit of Jerry Hausman, Tab 1.

[96] Affidavit of John T. Stupka, attached to letter from Michael Kellogg to Richard Rosen, Generic Wireless Waiver, November 1993, copy attached at Tab 10.

[97] Midland/Odessa, Abilene, Lubbock, and Amarillo

and call handoff waiver, which was essential to bring into view the goal of seamless nationwide service.[98] This waiver permits customers to place and receive calls when outside their service area with relative transparency, and to continue a call while leaving their "home" area and entering another system. Complete relief was not granted, however. For instance, equal access cellular carriers cannot provide "secondary call treatment" such as voice mail services or recordings when a line is busy.

Now pending is the Generic Wireless Waiver, discussed supra, at Section II A. 4. Each of these steps were motivated by the goal of providing cellular customers with the calling scopes that make sense in a wireless environment, and that the customers demand.

As RBOC-affiliated cellular providers increase calling scopes within their Court-imposed limitations, cellular providers that are not restricted by the MFJ have responded competitively. Two examples of existing increased calling scopes by non-RBOCs crystallize this competitive process. In Texas, Cellular One of West Texas has combined what were local calling scopes in West Texas into a 30,000 square mile "Supersystem" where cellular calls can be placed with no long distance charges. Additionally, in South Texas, McCaw served local markets including Corpus Christi, San Antonio, Austin, San Marcos, New Braunfels, and the Rio Grande Valley. Now this 19,000 square mile area is served as a "Supersystem" with no long distance charges applying for calling within the "System."[99]

---

[98] See Letter from Richard L. Rosen, Chief, Communications & Finance, Department of Justice to Michael Kellogg, dated October 5, 1992, (Handoff Conditions), and United States v. AT&T et al, Slip Op. CA 82-0192 (U.S.D.C.) September 12, 1990 (Automatic Call Delivery Waiver).

[99] McCaw is not alone in this action. GTE has combined its Houston - Port Arthur - Beaumont local areas into a toll free calling scope, as well. But note, because of MFJ restrictions, SBMS cannot combine its San Antonio and Rio Grande Valley markets with GTE's Austin market as

Another example is McCaw's "City of Florida" system which includes most of the state of Florida as an expanded local calling area. McCaw and other non-BOC cellular companies make their expanded calling areas a major feature of advertising.[100] As Professor Hausman pointed out, McCaw obviously calculated the scope of local calling based on its added revenue and costs.[101] In Miami, for instance, the McCaw price for an average use of 160 minutes is $95.00 per month, where Bell South charges $94.51 for the same amount of minutes.[102] Dobson Cellular has offered a "Perfect Plan Plus" which includes 48 state toll-free calling from the home area for a flat rate.[103] This is a clear benefit to the end user as sought by the Commission in paragraph 41 of the NPRM.

Who has the incentive to expand local calling scopes to meet customer demand? Only the wireless provider. Certainly interexchange carriers do not have this incentive, they make far more money selling long distance to the individual cellular customer at premium rates, than selling to a cellular provider at a bulk rate discount. Interexchange carriers profit from smaller calling scopes where they do not control the network.[104] LECs do not have the same incentive as the wireless providers to increase calling scopes. In fact, in many areas the

---

a local calling scope in order to compete effectively against McCaw's South Texas Supersystem. This is a perfect example of the inability to meet customer needs because of outdated restrictions.

[100] See Tab 6 for examples of Cellular One of West Texas' and McCaw's advertising the West Texas and South Texas "Supersystems".

[101] Affidavit of Jerry Hausman, at p. 23.

[102] Affidavit of Jerry Hausman, at p. 24.

[103] See Tab 7 for Dobson rate sheets, advertisements.

[104] Recall the MCI/Nextel "sole provider" agreement.

exchange boundaries in which a LEC is certficated are considerably smaller than the MSA or RSA boundaries, and are almost always smaller than the clustered RSA/MSA systems many cellular carriers have combined.[105] It is the wireless provider with its highly mobile customers who want to satisfy the needs of these end users and thereby increase the customers' usage of the cellular network.

The AT&T/McCaw Consent Decree is a good example of how outdated landline generated regulations do not meet the needs of wireless customers. Following the approval of the decree in its current form, the "Supersystems" of South Texas and the "City of Florida" will be dismantled by virtue of the imposition of LATA restrictions and equal access obligations upon McCaw.[106] This was done to balance the competitive playing field by imposing the same restrictions on McCaw as are faced by it competitors. SBC certainly supports the end no matter how misguided the means. A far better means would be the elimination of equal access and calling scope restrictions on all CMRS providers.

No longer will McCaw be able to absorb long distance rates or transport across these LATA boundaries, absent waivers. This is excellent news to the interexchange carriers, who will see long distance charges at premium rates once again. While it may appear to be good news to SBMS, which competes in many of these markets without a reciprocal ability to meet McCaw's campaign, in fact, SBMS would rather see all cellular providers with this freedom.

---

[105] For instance, in the Dallas MSA, there are three certificated local exchange carriers.

[106] While SBMS urged that equal access obligations be imposed on McCaw if the transaction was approved, that was because there could be no level playing field or ability to compete if McCaw could merge with the dominant provider of long distance service in the U.S. without restrictions on bundling or calling scopes, while SBMS still had both hands tied by the MFJ.

It is the McCaw customers who will pay the price for the protection of AT&T and other interexchange carriers through smaller calling scopes and higher prices for interexchange carrier services.

This same scenario has happened to SBMS in markets it acquired from cellular carriers who did not have equal access obligations. For instance, Illinois RSA 2, a relatively small RSA outside of Chicago is divided by five LATAs. The initial licensee, which was not bound by equal access, offered the whole RSA in its calling scope. Suddenly, solely because of being acquired by an RBOC-affiliated company (SBMS), customers in this RSA were constantly confronted with toll calls where none existed before on calls originated in a portion of the RSA in one LATA and terminated in a portion of the RSA located in another LATA. This was a situation that had to be and subsequently was resolved via a waiver.

3. Of the existing defined service areas, MTAs are the appropriate local calling scope for all wireless providers.

The Commission has stated that MTAs and BTAs were designed "based on the flow of commerce."[107] Part of the Commission's consideration in determining these areas was due to its recognition of the "widespread consolidation" of MSAs and RSA as discussed supra. Id. The Commission also concluded that a larger PCS service area could "facilitate regional and nationwide roaming" and allow licensees to "tailor their systems to the natural geographic dimensions of PCS markets." Id. This reasoning is as effective with cellular providers as with PCS providers, comports with the natural evolution of the cellular market that has been driven by customer demand and other healthy competitive forces, and recognizes the forces

---

[107] NPRM at p. 59, Broadband PCS Order, 8 FCC Rcd at 7732.